

Filed on:31/10/2012.

Disposed on:18/04/2013.

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM TUTICORIN.

Present: Thiru.M.Ramachandran, B.Sc., B.L., President.

Thiru.Dr.S.Leonard Vasanth, M.A., LL.B., Ph.D., Member I.

Tmt.K.Rosy Anne Florence, M.A., M.Phil, B.Ed., Member II.

(Thursday the 18th day of April 2013)

CONSUMER COMPLAINT.NO:197/2012.

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K.Ayyalusamy,
Anti Corruption Mass Movement,
1/98, Kollangkinnaru (Post),
Ottanatham Via,
Ottapidaram,
Tuticorin District.

...Complainant.

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..VS..

The Public Information Officer,
Integrated Child Development Programme,
Ottapidaram,
Tuticorin District.

... Opposite party.

This complaint came before us for final hearing on 4-4-2013 in the presence of Tmt.Neelaveni, Advocate for the complainant and Thiru.U.S.Sekar, Advocate for the opposite party and having stood over till this day for consideration this Forum made the following:

ORDER

This complaint has been filed under section 12 of Consumer Protection Act

1986.

1) The averments in the complaint are as follows: The complainant has filed a petition under RTI Act seeking some informations from the opposite party on 23-8-2012 and the opposite party has received the same on 24-8-2012. But he has not sent the informations within the stipulated period of 30 days which amounts to deficiency in service on the part of the opposite party. Since the complainant has not received the particulars which has caused much mental agony and sufferings to the complainant and hence he has filed this complaint to direct the opposite party to pay Rs.1,00,000/- for the deficiency in service and for the mental agony caused to him and towards the cost of the proceedings with 12% interest from the date of filing of this case till the date of realization.

2) The averments in the counter of the opposite party are as follows: The complaint is not maintainable either in law or on facts. The complainant has filed a petition dated 22-8-2012 seeking some informations under the RTI Act which was received by the opposite party on 23-8-2012. The opposite party has already furnished the informations as sought for by the complainant and hence he has not committed any deficiency in service. The complainant is repeatedly asking the very same informations by changing the year alone from the opposite party as such the opposite party has furnished the informations to the complainant for all the petitions filed by him. The complainant is having a personal motive against one Tmt.M.Saradha who is working as an Assistant in the opposite party office Kollankinnaru. Since the said Saradha had lodged a criminal complaint against the complainant and his son Ananthasudharsan before Naraikinaru Police Station in Cr.No.29/2012 in order to take revenge against Saradha the complainant and his son are sending petitions again and again to get informations regarding the Kollankinnaru centre. The complainant had already filed two complaints before this Forum in CC.No.90/2012

and CC.No.91/2012 against the opposite party and they were allowed. Against that the opposite party had preferred appeals before the State Commission. As per section 19 (1) of the RTI Act if any person does not receive any particulars with the stipulated time he/she can prefer an appeal to the appellate authority appointed in his behalf. As per section 19(3) of the RTI Act a 2nd appeal would lie before the State Information Commission. The complainant has not exhausted the above remedies available under the RTI Act. Hence the complaint is not maintainable before this Forum. As per Section 22 of the RTI Act it has got overriding effect to the Act over any other law for the time being in force. Section 23 of the RTI Act provides that no courts shall entertain any suit application or other proceedings in respect of any order made under this Act and no such orders shall be called in question otherwise than by way of appeal under this Act. More over as per section 2(d) of the Consumer Protection Act a consumer means a person who hires or avails any service for consideration and whereas information provided under RTI Act is not a service provided for consideration. Hence the relief sought for against the opposite party is not maintainable before this Forum. Hence the complaint is liable to be dismissed.

3) The points for consideration are:

1. Whether section 22 of Right to Information Act has got any overriding effect on the provision of the Consumer Protection Act 1986?
2. Whether section 23 of RTI oust the jurisdiction of the Consumer Forum?
3. Whether the complainant is a consumer who hires or avails the service for consideration?
4. Whether the opposite party has committed deficiency in service and if so;

5. To what relief the complainant is entitled to?

4) Points No.1 to 3: The opposite party has stated that section 22 of the Right to Information Act has got overriding effect to the Act over any other law for the time being in force and section 23 of the Right to Information Act provides that no courts shall entertain any suit application or other proceedings in respect of any order made under this Act, no such order shall be called in question otherwise than by way of appeal.

The National Commission has held in the case of Dr.S.P.Thirumalai Rao vs. Municipal Commissioner of Mysore Corporation, Mysore reported in III (2012) CPJ Page 72 that section 22 of RTI Act does not have any overriding effect on the Consumer Protection Act 1986. On the question of bar of jurisdiction of courts the National Commission has held that section 3 of the Consumer Protection Act provides an additional remedy that the bar of jurisdiction under this section is only against the courts as also in respect of the order made under the act but in this case the averment of the complainant is that the opposite party had not passed any order on account of which the question of bar of jurisdiction does not arise. The National Commission has held in the above case that the complainant had availed of services under the said Act for consideration by paying fee and had sought information under the said act which was not supplied to him which amounts to deficiency of service. The complainant is thus a consumer vis-à-vis information sought on payment under the said Act.

The counsel for the opposite party relied on citations made by the National Commission in a subsequent case in the case of T.Pundalika Vs. Revenue Department (Service Division) Government of Karnataka in R.P.No.4061/2010 in which the Karnataka State Commission has held that the complainant cannot be considered as a consumer as defined under Consumer Protection Act since there is a remedy available for the

complainant to approach the appellate authority u/s.19 of the RTI Act 2005. The National Commission has agreed with the above view taken by the State Commission and they have held that the petitioner cannot claim to be a consumer under the Consumer Protection Act. The National Commission has held in the above case that since there is a remedy available for the complainant to approach the appellate authority the complainant cannot be claimed to be a consumer.

The Hon'ble Supreme Court has held in the case of National Seeds Corporation Ltd., Vs. M.Madhusudhan Reddy and Another reported in (2012) 3 MLJ Page 166 (SC) that the remedy of arbitration is not the only remedy available to the consumer. Rather it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the complainant opts for the remedy of arbitration then it may not be possible to say that he cannot subsequently file complaint under the Consumer Protection Act. However if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking section 8 of the Arbitration and Conciliation Act, 1996. Moreover the plain language of Section 3 of the Consumer Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force. On the same analogy if appeal provision is available in the Act we cannot compel the complainant to file a complaint before the appellate authority since U/s.3 of the Consumer Protection Act the remedy available is in addition to and not in derogation of the provisions of any other law for the time being in force.

The Hon'ble Supreme Court has also held in the case of Trans Mediterranean Airways Vs. Universal Exports and another reported in 2011(8) MLJ Page 570 that the protection provided under Consumer Protection Act to consumers is in addition to the remedies

available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy.

In the case of Skypay Couriers Limited Vs. Tata Chemicals Limited reported in 2000 (3) MLJ Page 74 the Hon'ble Supreme Court has held even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force.

In the case of Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M.Lalitha reported in 2004 (IV) M.L.J. Page 94 the Hon'ble Supreme Court has held that the trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other Forum as established under some enactment. The above observations of the Hon'ble Supreme Court makes it clear that since there is another remedy is available for the complainant to approach the appellate authority we cannot direct him to approach the appellate authority and there is no bar in taking the case on file by the Consumer Forum.

5) The counsel for the opposite party has argued that in some of the cases relating to Right to Information Act the Madurai Bench of the Hon'ble Madras High Court has stayed the proceedings of this Forum under article 226 of Constitution of India on the ground that the complainants are having alternate remedy of filing appeal before the statutory authority. The Hon'ble Supreme Court has held in the case of Cisily Kallarackal Vs. Vehicle Factory reported in 2012(VI) CTC page 217 that the order passed by the

Commission (National Commission) are incapable of being questioned under the Writ jurisdiction of the High Court as a statutory appeal in terms of section 27(a) would lie to the Supreme Court. On the same analogy since statutory appeal lies on the orders passed by the District Forum to the State Commission and then to the National Commission the writ jurisdiction of the High Courts under article 226 of Constitution of India cannot be exercised.

6) In the above circumstances we come to the conclusion that the complainant is a consumer as per the provisions of the Consumer Protection Act and just because there is appeal provision in the Right to Information Act, the complainant is not barred to file a case before the Consumer Forum since U/s.3 of the Consumer Protection Act the remedy available to a consumer is an optional remedy and it is in addition to and not in derogation of the provisions of any other law for the time being in force. Hence we decide these points accordingly.

7) Points No.4 & 5: The case of the complainant is that he has filed a petition seeking some informations from the opposite party on 22-8-2012 and the opposite party has received the same on 23-8-2012 but has not furnished the particulars within the stipulated period of 30 days, hence the opposite party has committed deficiency in service. On the other hand the opposite party has stated that he has furnished the information as sought for by the complainant and hence he has not committed any deficiency in service.

8) To prove the case of the complainant proof affidavit has been filed and Ex.A1 to Ex.A3 have been marked. Ex.A1 is copy of the petition under RTI Act dated 22-8-2012. Ex.A2 is the postal receipt for having sent the same to the opposite party. Ex.A3 is acknowledgement card from the opposite party. On the side of the opposite

party proof affidavit has been filed and no documents have been marked.

9) The complainant would contend in his complaint and proof affidavit that the opposite party has not furnished the informations as sought for by him in his letter dated 22-8-2012. On the other hand the opposite party has stated that he has furnished the informations as sought for by the complainant and hence he has not committed any deficiency in service. The opposite party has not stated anything regarding the reference number on which he sent the particulars to the complainant and he had not also filed any documents to prove that he had sent the particulars to the complainant within the statutory period.

10) In the circumstances stated above, we come to the conclusion that the opposite party has not furnished the particulars as sought for by the complainant and hence the complainant is entitled for the relief as prayed for. We decide these points accordingly.

11) In the result, the complaint is allowed and the opposite party is directed to pay Rs.15,000/- as compensation for the mental agony and sufferings caused to the complainant and to pay Rs.3000/- towards cost of the proceedings, within a period of two months from the date of this order, failing which the complainant is at liberty to execute this order U/s.25 and 27 of the Consumer Protection Act 1986.

Dictated to the Steno-typist, taken and typed by him, and corrected by me and pronounced by us in the Open Forum on this the 18th day of April 2013.

Member II.

Member I.

President.

Annexure

I) List of documents marked for the complainant:

1. Ex.A1/22-8-12 : Copy of the petition under RTI Act
2. Ex.A2/ : Postal receipt
3. Ex.A3/ : Acknowledgement card from the opposite party.

II) List of documents marked for the opposite party: Nil.**Member II.****Member I.****President.****30/04/13**